

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YVROSE JEAN-BAPTISTE,

Plaintiff,

-against-

**MEMORANDUM AND ORDER**  
No. 07-CV-3535 (FB) (CLP)

NYC DEPARTMENT OF EDUCATION, DINA  
KOSKI, Officially and Individually, DEBRA  
GERSHMAN, Officially and Individually.

Defendants.

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*Appearance:*

*For the Plaintiff:*

DAVID C. WIMS, ESQ.  
Law Office of David Wims  
1430 Pitkin Avenue  
2nd Floor  
Brooklyn, NY 11233

*For the Defendants:*

DANIEL S. GOMEZ-SANCHEZ, ESQ.  
ANDREA MARY O'CONNOR, ESQ.  
New York City Law Department  
100 Church Street  
New York, NY 10007

**BLOCK, Senior District Judge:**

Plaintiff Yvrose Jean-Baptiste (“Jean-Baptiste”) brings this race and national origin discrimination action against the New York City Department of Education, Dina Koski, the principal of P.S. 26, and Debra Gershman, the vice principal of P.S. 26 (collectively, “Defendants”), alleging disparate treatment, hostile work environment, and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 1981 and 1983, the New York State Human Rights Law (“NYSHRL”), and the New York City Human Rights Law (“NYCHRL”). As discussed in open court on December 16, 2009, Jean-Baptiste requests the voluntary dismissal of the Complaint without prejudice to her renewal of her state law claims in state court; the Defendants do not give their consent.

After considering the factors relevant to this motion, enunciated by the Second Circuit in *Zagano v. Fordham Univ.*, 900 F.2d 12, 14 (2d Cir.1990), the Court dismisses the Complaint without prejudice. *See* Fed. R. Civ. P. 41(a)(2). Notably, “the presumption in this circuit is that a court should grant a dismissal pursuant to 41(a)(2) absent a showing that defendants will suffer substantial prejudice as a result.” *BD ex rel. Jean Doe v. DeBuono*, 193 F.R.D. 117, 123 (S.D.N.Y. 2000). The Defendants will suffer no such prejudice. To the contrary, they no longer must defend against Jean-Baptiste’s federal claims. As discussed at oral argument, if the Court were to grant Defendants’ motion for summary judgment, the same outcome would be obtained: the Court would decline to exercise supplemental jurisdiction over her state law claims and remand the state law claims, as it now does. *See* 28 U.S.C. § 1367(c) (a district court “may decline to exercise supplemental jurisdiction” if, among other circumstances, “the district court has dismissed all claims over which it has original jurisdiction.”); *see also D’Alto v. Dahon California, Inc.*, 100 F.3d 281, 283 (2d Cir. 1996) (“The United States Supreme Court recognized long ago that starting a litigation all over again does not constitute legal prejudice.”).

As such, the Court grants Jean-Baptiste’s motion for a dismissal without prejudice to the renewal of her NYSHRL and NYCHRL claims in state court.

**SO ORDERED.**

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FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, NY  
December 18, 2009